

September 13, 2005

Marian E. Moe
Deputy Attorney General
Department of Justice
[Address Redacted]
Sacramento, CA 94244-2550

**Re: Your Request for Advice
Our File No. A-05-176**

Dear Ms. Moe:

This letter is in response to your request on behalf of Arabella Martinez for advice regarding the gift and honorarium provisions of the Political Reform Act (the “Act”).¹

QUESTION

May Arabella Martinez, a new board member on the California Cultural and Historical Endowment (“CCHE”), accept a \$10,000 Community Leadership Award from the San Francisco Foundation honoring her for lifetime community service?

CONCLUSION

Yes. Under the facts presented, the award is a “bona fide competition” not related to Ms. Martinez’s official status, and therefore falls under the exception to the Act’s gift limit under regulation 18946.5.

FACTS

Arabella Martinez is a new board member of CCHE. The CCHE is a relatively new government board, created pursuant to Education Code Section 20050 et seq., which has as its primary responsibility awarding grants to nonprofit organizations and government agencies for a diverse range of cultural and historical purposes. The grants must be used for capital assets projects or ones directly related to capital assets, such as restoration of an historic building or exhibits for a museum. Ms. Martinez was appointed to the CCHE Board on June 22, 2005, but was not sworn in until her first meeting on July 7, 2005.

Ms. Martinez has asked whether she may accept an award honoring her for a lifetime of community service. Among her many notable achievements was her role in founding a community development nonprofit organization called the Spanish Speaking

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

Unity Council. The council has been a major force in revitalizing an economically-challenged neighborhood in the Fruitvale district of the City of Oakland. She has also worked as a social worker and community activist in minority and women's economic and social justice issues, and served as an Assistant Secretary of the Office of Human Development Services in the U.S. Department of Health, Education and Welfare.

The award is a \$10,000 honorarium from the San Francisco Foundation to be given to her at an award dinner on September 20, 2005. The San Francisco Foundation is a 501(c)(3) nonprofit corporation that gives grants and awards to individuals and organizations to encourage "strong communities, foster civic leadership, and promote philanthropy." The Foundation has six program areas in which awards and grants are made, including area this type of "regrant" the funds for another project. The CCHE does not award grants for this type of "regrant."

Ms. Martinez was selected for one of four Community Leadership Awards for 2005. This is an annual award given to outstanding community leaders. The recipients of the award are nominated by their peers, and the selection is based on research by San Francisco Foundation staff. Ms. Martinez was one of 285 nominees for the award. She did not know she had been nominated until she was informed of the award in mid-July 2005. An awards committee composed of community leaders from throughout the Bay area reviewed the information gathered by the staff, and recommended finalists to the Board of Trustees. Neither the Foundation staff, nor the members of the awards committee, contacted the potential recipients in advance of the final decision. The awards committee made their recommendation for the finalists on June 23, 2005, and the San Francisco Foundation's Board of Trustees voted on the final selection of the winners on July 12, 2005.

ANALYSIS

Bona Fide Competition

Section 82028(a) defines a "gift" as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." Section 82028(b)(6) exempts from the definition of "gift" personalized plaques and trophies with a value of less than \$250.

The gift limit for members of state boards or commissions is set forth in section 89503(c). Currently, no state board or commission member may accept gifts from any single source in any calendar year with a value of more than \$360. Regulation 18946.5 contains an exception to the restrictions on gifts on for a prize or award received by an official in a bona fide competition. The regulation states:

"A prize or an award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as an official or candidate. A prize or award which is not reported as a gift shall be reported as income."

Regulation 18946.5 is frequently applied in cases where public officials win prizes in raffles, drawings, lotteries, or other contests *open to the public or a wide field of contestants*. The regulation in the past, however, has been applied to allow an elected official to keep a public service award and cash prize, where the competition was bona fide and the group of contestants was not exclusively made up of California public officials.

In the *Pritchard* Advice Letter, No. A-95-094, the regulation applied to permit Assemblymember Jackie Speier to receive KGO-TV's "Woman of the Year" award and a cash prize, despite the fact that Assemblymember Speier was a California elected official. This was due to the fact that the pool of contestants was not limited to public officials, but was comprised of women from many fields, including medicine, sports, social work, and journalism. Moreover, an independent panel of judges picked the winner.

Similarly, in *In re Solis* (2000) 14 FPPC Ops. 7, an assembly member was allowed to keep the John F. Kennedy Profile in Courage Award despite the fact that the award is presented annually to a current or former governmental official. We concluded she could keep the award because the donor was a non-profit foundation and was not a potential source of conflict of interest for Senator Solis, nor was she in a position to grant any assistance or favors to the foundation.

The facts you describe are substantially similar to both *Pritchard* and *In re Solis*. The competition for the Community Leadership Awards is not limited to California public officials or candidates, but to all members of the community who have demonstrated leadership achievements. In addition, there were 285 nominees considered for the award. Finally the date of the award demonstrates that the award was based on the official's exemplary conduct before she was a public official. Thus, we consider the award to be exempt from the gift limits of the Act as a bona fide competition. Please note that the award is considered income and will be subject to disclosure, and potentially disqualification if the donor is to be materially affected by a decision of the CCHE.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

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